IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 10835 of 2002

Between:

K.Malla Reddy, S/o. K.Linga Reddy, R/o. Lingareddy Pally Village, Siddipet Mandal, Medak District.

..... PETITIONER

AND

1 District Panchayat Officer, Medak District at Sangareddy.
2 Divisional Panchayat Officer, Siddipet, Medak District.
3 Gram Panchayat, Lingareddy Palli, Siddipet Mandal, Medak District, through its Executive Officer/Panchayat Secretary.

4 Sri M.Ramaswamy, Sarpanch, Lingareddy Palli Gram Panchayat, Lingareddy Palli Village, Siddipet Mandal, Medak District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue Writ of Certiorari or any other writ or writs or order or direction to call for the records pertaining to proceedings No.1602/2001/A2-pts dt. 30.05.2002 issued by the 1st respondent and to quash the same by declaring it as illegal, arbitrary and in violation of principles of natural justice and contrary to the provisions of Sec.22(1) of A.P.Panchayat Raj Act and consequently suspend the said proceeding and to pass.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following:

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ORAL ORDER:

This petition is filed questioning the proceedings No.1602/2001/A2-pts dated 30.05.2002 issued by the first respondent intimating the petitioner that he ceased to hold the office of the Member of Ward No.1 and also the post of
Upa-Sarpanch of Gram Panchayat, Lingareddipally of Siddipet Mandal, with immediate effect.

2. The contention of the learned counsel for the petitioner is that in view of Section 22 of the A.P. Panchayat Raj Act, 1994 (for short 'the Act'), it is only the District Court having jurisdiction over the area that can decide the question as to whether a person ceased to be the Member of a Gram Panchayat and so is disqualified for the post of Sarpanch or Upa-Sarpanch or not and since the District Panchayat Officer is incompetent to say that a person ceased to be a Member of Gram Panchayat, for violation of the provisions of the Act, the impugned proceedings of the first respondent are liable to be quashed.

3. The learned Government Pleader fairly conceded that in view of the ratio in **CHAVA ROSAIAH v. CHINTALA VENKATESWARLU AND ANOTHER** the proceedings of the first respondent are liable to be quashed.

4. The contention of the learned counsel for the fourth respondent is that since the impugned proceedings is only an intimation to the petitioner, if the petitioner is aggrieved, it is for him to approach the District Court for obtaining a declaration and contended that since the facts in **CHAVA ROSAIAH** case
(1 supra) are different from the facts in this case, and since question as to whether even in a case where a person does not dispute his disqualification also if he would have to go to the District Court for a decision under Section 22 of the Act is not considered in **CHAVA ROSAIAH** case (1 supra) and since it is not known whether

petitioner is admitting or denying of his being an employee of a cooperative society, inasmuch as he did not state anything about his status in the affidavit filed in support of the application, the petition is liable to be dismissed.

5. It is no doubt true that the allegations in the affidavit filed in support of the application do not disclose whether the petitioner is admitting or denying his being an employee in the cooperative society. It is also true that only in cases where a member disputes the correctness of the allegations made against him would the question of decision being given by the District Court arise and if he does not dispute the fact alleged question of the District Court adjudicating does not arise.

6. I am unable to agree with the contention of the learned counsel for the 4th respondent that the decision in **CHAVA ROSAIAH** case (1 supra) has no application to the facts of this case, because in para-18 of that Judgment, it is observed:

> "Section 22 of the Act is an enabling provision insofar as member or Sarpanch or any other member is concerned. It enables them to approach the District Court for a decision after receipt of the intimation of allegations by the member or Sarpanch against whom the allegations are made. It casts no obligation on the member or Sarpanch to compulsorily approach the District Court for a decision on mere receipt of intimation of allegation from the executive authority. A member or Sarpanch may or may not approach the District Court even if he disputes the correctness of the allegation. Allegations are mere allegations and no action can be taken thereupon unless there is adjudication and decision rendered by District Court on such allegations holding that a member or Sarpanch is disqualified or has become disqualified under any of the provisions contained under Sections 17 to 20 of the Act. Legislature has deliberately used the words *"such member or any other member" may within a period of two months apply to District Judge for decision"*. .....Thus, on literal interpretation, it must be held that Section 22 being only an enabling provision conferring right on such member or Sarpanch who receives an intimation of allegations of his not being qualified or having become disqualified that within two months he can approach the District Court for a decision. It is only on decision being rendered by the District Court holding that a member or Sarpanch is not qualified or has become disqualified then consequential action can be taken. Section 20 operates automatically that a person or member subject to any disqualification specified in Section 19 and subject to Section 22 such member or Sarpanch shall cease to hold office. Opening words of Section 20 *"Subject to the provisions of Section 22 a member shall cease to hold Office"* would rather support the view which we are taking that the disqualifications as specified in Section 19 would operate as a bar against a member or Sarpanch to hold the Office only when there is a decision rendered by District Court as envisaged in Section 22 and not otherwise. ....."

From the above observation in the said decision it is clear that there should be a decision by the District Court on the question whether a person has incurred a disqualification or not. So, it is not obligatory on the part of the petitioner to go to the District Court for adjudication, and the authorities concerned have to approach the

District Court and obtain a decision about the disqualification of the petitioner.

7. Therefore, the writ petition is allowed quashing the last paragraph of the communication No.1602/2001/A2-pts dated 30.05.2002. No costs.

(C.Y.Somayajulu, J)

Date:07.03.2005

Cvrk

To

1. The District Panchayat Officer, Medak District at Sangareddy.

2. The Divisional Panchayat Officer, Siddipet, Medak District.s

3. The Executive Officer/Panchayat Secretary, Gram Panchayat, Lingareddy Palli, Siddipet Mandal, Medak District.

4. Sri M.Ramaswamy, Sarpanch, Lingareddy Palli Gram Panchayat, Lingareddy Palli Village, Siddipet Mandal, Medak District.

5. The G.P. for Panchayat Raj and Rural Dev., High Court Buildings, Hyderabad (OUT)

6. 2 CD copies.